

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION

IN RE:)
)
NATHANIEL LEWIS ELLIOTT, JR.,) CASE NO. 05-60292 JPK
) Chapter 7
Debtor.)

ORDER FOR HEARING

On October 18, 2005, the Trustee filed a "Trustee's Verified Motion and Summons on Proceedings Supplemental to Execution to Garnishee-Defendant", which seeks to initiate proceedings supplemental to execution with respect to an order entered by the Court on July 20, 2005. That order was a "turnover order" which required the debtor to turn over to the Trustee 100% of a 2004 tax refund in the amount of \$5,522.00. That order is what it is and it connotes what it connotes, but it is definitely not a monetary judgment in favor of the Trustee, but rather only an order which compels the debtor to undertake certain action. The Trustee is proceeding under Fed.R.Bankr.P. 7069/Fed.R.Civ.P. 69(a), which provides for process to "enforce a judgment for the payment of money". The Court has grave doubts whether a turnover order satisfies the requirements of the foregoing rules, and thus, whether the Trustee's motion filed on October 18, 2005 is a legitimate procedural mechanism.¹

IT IS ORDERED that a hearing will be held on **November 18, 2005 at 1:00 P.M.** to discuss the procedural propriety of a proceeding supplemental to execution under the circumstances outlined above.

Dated at Hammond, Indiana on October 27, 2005.

/s/ J. Philip Klingeberger
J. Philip Klingeberger
United States Bankruptcy Court

Distribution:

Debtor, Attorney for Debtor, Trustee, US Trustee, Daniel L. Freeland, Kenneth A. Manning, Calvin D. Hawkins, David R. Dubois, Paul R. Chael

¹The Court passes over without mentioning the fact that the motion itself states that the "Trustee now has cause to believe that levy of execution against the Debtor will satisfy the Order" (emphasis supplied); the key for obtaining an order with respect to proceedings supplemental to execution under applicable law is that an execution will not satisfy a judgment. [You didn't think we read these that closely, did you?]